

REMARKS

Reconsideration of the allowability of the present application is requested respectfully.

Status of the Claims

Claims 1 to 3 have been rejected. Claims 4 to 41 have been withdrawn by the Examiner based on constructive election. No claims have been allowed. Claim 1 has been amended. No claims have been cancelled. No claims have been added. Accordingly, Claims 1 to 3 are presented for examination.

Information Disclosure Statement

An IDS, including transmittal document, Form PTO-1449 (modified), and copies of all publications cited, accompanies this reply.

Declaration in Accordance with MPEP §608.01(p)(1)(A)(2)(¶6.19)

A declaration, signed by a practitioner representing the applicant, stating that the amendatory material from the reply dated October 3, 2002 consists of the same material incorporated by reference in the WO 98/51325 application, accompanies this reply.

ARGUMENTS

The §101 Rejections

The Examiner has rejected Claims 1 to 3 under 35 U.S.C. §101 as being directed to unpatentable subject matter. The Examiner asserts that the claimed antibody has the same characteristics as antibodies found in nature and as such is unpatentable.

In response to this rejection, applicants, as suggested by the Examiner, have amended Claim 1 to recite "An isolated antibody". In view of this amendment, applicants respectfully request that the Examiner's rejection under 35 U.S.C. §101 be withdrawn.

Constructive Restriction of Claims 4 to 41

Applicants note Examiner's constructive restriction without traverse.

Objections Due to Improper Incorporation by Reference

In view of the Examiner's withdraw of Claims 4 to 41, incorporation of material from WO 98/51325, as proposed in the amendment of October 3, 2002, is no longer necessary to provide support to any of the pending claims.

However, applicants maintain their assertion that the incorporation by reference of portions of WO 98/51325, as proposed in the amendment to the description of October 3, 2002, is proper and as such should be allowed. Thus, applicants respectfully traverse the Examiner's objection of the incorporation by reference.

The Examiner has asserted that the incorporation by is improper because “the instant specification incorporates WO98/51325 in its entirety, rather than pointing out specific portions or subject matter. That is, amending the instant specification to add specific subject matter without a specific basis in the disclosure is improper.” MPEP §608.01(p)(I)(A) states, “Particular attention should be directed to specific portions of the referenced document where the subject matter being incorporated may be found.” However, applicants respectfully submit that the application as filed does contain specific references to the subject matter to be incorporated.

For example, page 2, line 26, to page 3, line 2, of the application states:

As disclosed and claimed in WO 98/51325, which reference is hereby incorporated by reference in its entirety, we have identified random peptides and their fragments, motifs, derivatives, analogs or peptidomimetics thereof which are capable of specific binding to GIT transport receptors such as the D2H, hSI, HPT1 and hPEPT1 receptors (hereinafter referred to as “GIT targeting agents”).

In addition, page 6, lines 1 to 2, of the application states:

Additional GIT targeting agents are disclosed throughout the above-referenced WO 98/51325.

These passages clearly make reference to the subject matter of “GIT targeting agents” and as such an incorporation of material related the “GIT targeting agents” would be proper. As shown in the reply dated October 3, 2002, the material to be incorporated by reference describes screening of peptide libraries for compounds capable of binding to D2H, hSI, HPT1 and hPEPT1 receptors. In other words, the material to be incorporated by reference is directed to identification of “GIT targeting agents”. Since the application particularly points

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out that WO98/51325 is referenced and incorporated because of its "GIT targeting agent" disclosure, and the material to be incorporated by reference is directed to "GIT targeting agents", applicants submit that the requirements of MPEP §608.01(p)(I)(A) have been satisfied. Thus, the examiner's assertion that specific subject matter has not been pointed out is without basis. Accordingly, applicants respectfully request that the objection to the incorporation by reference be withdrawn.

A Petition for extending the period to respond to the Examiner's Action for three months, from May 11, 2003 to August 11, 2003 is enclosed.

Respectfully submitted,



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